

CHAMBERS

LATHAM & WATKINS LLP
G. Andrew Lundberg (SBN 108509)
Leslie A. Pereira (SBN 180222)
Bonita Dombey Moore (SBN 221479)
633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Telephone: (213) 485-1234
Facsimile: (213) 891-8763

LATHAM & WATKINS LLP
John D. Minton (SBN 223823)
135 Commonwealth Drive
Menlo Park, California 94025
Telephone: (650) 328-4600
Facsimile: (650) 463-2600

E-FILED 7/14/2005

Attorneys for Plaintiffs NETSCAPE
COMMUNICATIONS CORPORATION
AND AMERICA ONLINE, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NETSCAPE COMMUNICATIONS
CORPORATION, a Delaware corporation, and
AMERICA ONLINE, INC., a Delaware
corporation,

Plaintiffs,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA., a
Pennsylvania corporation, and DOES 1 through
50,

Defendants.

CASE No. C 05-01601 RMW

STIPULATION RE: STAY OF
PROCEEDINGS; ~~PROPOSED~~ ORDER

STIPULATION

The parties hereto, through their respective undersigned counsel of record, are agreed and hereby stipulate as follows:

1. The parties now have pending between them two actions arising out of a dispute over insurance coverage for the same underlying claim:

(a) National Union Fire Insurance Company of Pittsburgh, PA. and American International Specialty Lines Insurance Company v. Netscape Communications Corporation and America Online, Inc., Case No. 05 CV 3163 (DAB) (the "New York Action") filed March 23, 2005; and

(b) this action (the "California action"), filed in state court on April 1, 2005 and removed to this Court on April 18, 2005.

2. On April 18, 2005, the plaintiffs in the instant California Action, Netscape Communications Corporation ("Netscape") and America Online, Inc. ("AOL"), filed a motion in the New York Action to dismiss, stay or transfer the New York Action pursuant to Fed. R. Civ. P. 12(b)(3) and (6) and 28 U.S.C. § 1404(a) (the "New York Transfer Motion"). At the time the New York Transfer Motion was filed, this action was still pending in state court; its subsequent removal has effectively limited that motion to a motion to transfer the New York Action to this Court.

3. On May 12, defendant in the instant California action (and plaintiff in the New York Action) National Union Fire Insurance Company of Pittsburgh, PA. ("National Union") filed a motion in this action to transfer venue pursuant to 28 U.S.C. § 1404(a) (the "California Transfer Motion").

4. The New York Transfer Motion has been fully briefed (AOL/Netscape's reply brief on that motion was filed on April 27, 2005). The parties are awaiting the advice of the Court in that action as to whether it will hold a hearing on the motion or will rule without hearing.

5. According to the docket, hearing on the California Transfer Motion in this action is set for July 15, 2005.

1 6. In order to avoid the unnecessary expenditure of the Court's and the
2 parties' resources, the parties are agreed that pending a ruling in the New York Action on
3 AOL/Netscape's pending motion to dismiss, stay or transfer that action, proceedings in this
4 action, including without limitation further briefing or consideration of the California Transfer
5 Motion, should be stayed. The parties contemplate that the ruling on the New York Transfer
6 Motion will obviate the need for proceedings on the California Transfer Motion and either
7 dispose of, or lead the parties to agree to dispose of, the issue of the proper venue for their
8 various claims and defenses.

9 7. Accordingly, the parties request that this Court enter its order (a) staying
10 all proceedings in this action until a final ruling is entered on the New York Transfer Motion,
11 and (b) directing the parties to jointly notify this Court
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 ///

27 ///

28 ///

1 within 10 days of such ruling and advise the Court of their views as to how the parties believe
2 this action should further proceed.

3 SO STIPULATED:

4 Dated: July 1, 2005

LATHAM & WATKINS LLP

G. Andrew Lundberg
Leslie A. Pereira
Bonita Dombey Moore
John D. Minton¹

8 By _____ /s/
9 John D. Minton
10 Attorneys for Plaintiffs NETSCAPE
11 COMMUNICATIONS CORPORATION AND
12 AMERICA ONLINE, INC.

12 Dated: July 1, 2005

NIXON PEABODY LLP

Mitchell A. Stearn
Kevin M. Grace
Michael P. O'Bresly

16 By _____ /s/
17 Michael P. O'Bresly
18 Attorneys for Defendant NATIONAL UNION
19 FIRE INSURANCE COMPANY OF
20 PITTSBURGH, PA.

21 **ORDER**

22 Good cause therefore appearing, IT IS SO ORDERED.

23
24 Dated: 7/8/05

Ronald M. Whyte
Hon. Ronald M. Whyte
United States District Judge

26
27 ¹ The undersigned attests, pursuant to General Order No. 45, Section X, that concurrence in the
28 filing of this stipulation has been obtained from Michael P. O'Bresly, counsel for National
Union Fire Insurance Company of Pittsburgh, P.A.